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No. 82-318

UNITED STATES SUPREME COURT

October Term, 1981

Lowell M. Stroom, Petitioner
v.
James E. Carter, Respondent

Petition for
Writ of Certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

SUPPLEMENTARY BRIEF 1
responding to
the Solicitor General's Waiver

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SUPPLEMENTARY BRIEF 1
RESPONDING TO THE SOLICITOR GENERAL'S WAIVER OF RIGHT TO FILE

Pursuant to Rule 22.6 of the Rules of the Supreme Court, Petitioner hereby files Supplementary Brief 1 responding to the Solicitor General's waiver of the "right of the Government to file a response to the petition", an intervening matter. Petitioner's "Petition" for Certiorari effectively protects and conforms to the interests of the United States, and to prior participation by the United States in cases decided by the Supreme Court which concern the voting franchise. The waiver of the Solicitor General supports Petitioner's request for a Writ of Certiorari, and it is in the public interest that certiorari be granted.

The relief requested by these proceedings, consists of rights which are secured for the People by the Constitution in

Articles IV and VI, Amendment XIV, and elsewhere, which protect in comprehensive terms, the entire voting franchise, and not simply a part of the franchise. The Solicitor General cannot oppose this relief "under color of law" without violating statutes of the Criminal Code. (18 U.S.C. §241).

Concerning prior United States participation in voting franchise cases, in Wesberry v. Sanders, 376 US 1, Baker v. Carr, 360 US 186, and Reynolds v. Sims, 377 US 533, the United States participated "amicus curiae" in the proceedings, advocating that a remedy which is provided by the present proceedings should be available when the voting franchise is debased or deprived. In Baker v. Carr, supra, the Supreme Court affirmed the United States guarantee of the voting franchise, stating: "A citizen's right to vote free of arbitrary impairment by

state action has been judicially recognized as a right secured by the Constitution". Where there is an abridgment of the voting franchise, a deprivation of the right to vote, the Supreme Court stated in Reynolds v. Sims, supra at 585, "it would be an unusual case in which a court would not be justified in taking appropriate action to insure that no further elections are conducted under the invalid (unconstitutional) plan (for elections)." In Wesberry v. Sanders, supra at 6, the Supreme Court stated: "The right to vote is too important in our society to be stripped of judicial protection."

Pursuant to the above decisions which were each advocated, amicus curiae, by the United States, and when a deprivation of rights and an abridgment of the voting franchise had been established, the Federal Courts in Reynolds v. State Election Board, 233 F. Supp 323, provided the effective remedy which is contained in the present

proceedings. Portions of the Reynolds decision, as the decision appears in the Federal Supplement, are appended to this Supplementary Brief. In Reynolds, ibid., the Federal Courts declared prior state elections which failed to provide ballots of equal value, to be null and void, Appendix at A-3. The decision declared the offices concerned to be vacant, Appendix at A-1, A-3, and required that new special elections be provided according to a Court approved plan. Appendix at A-1, A-2. In cases decided since Reynolds, ibid., the Supreme Court has stated that the laws of the Constitution require elections in which ballots are precisely equal in value, and not ballots which are simply nearly equal.

The remedy contained in the Reynolds decision, ibid., established an equitable remedy, correcting an existing wrong, and restoring rights to which the People are entitled. The remedy was constructed to

respond to specific conditions.

The participation by the United States in these and other prior cases decided by the Supreme Court is supportive of the granting of Certiorari in the present case. This case contains important questions of Constitutional law which should be settled in the Supreme Court. The effect of abridged and debased elections in 1980, is a deprivation of the right of the People to have offices established by the Constitution, filled according to the laws of the Constitution, which requires remedy. United States guarantees of the voting franchise are essential in the pending 1982 elections. Judicial protection is mandated. Certiorari should be granted, and hearings provided at the earliest possible date, on questions of national importance and the public interests.

Dated _____ by _____

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APPENDIX

Excerpts from:

REYNOLDS v. STATE ELECTION BOARD

as the Decision and Orders
are reported in Volume 233 of
the Federal Supplement
at 323, 330

The remedy provided by the proceedings is an equitable remedy, containing also elements of the Writ of Mandamus, and the Writ of Election.

> We . . . declare all legislative offices of the Oklahoma Legislature vacant as of the fifteenth day after the general election in November, 1964, and subject to special elections under 26 O.S. §§ 541-545, inclusive. It thus becomes the statutory duty of the Governor to call special elections as provided by 26 O.S. §§ 541-545, inclusive. The special elections will be conducted for the purpose of nominating candidates for the offices of the Senate and House of Representatives from the districts designated and delineated in the revised order of reapportionment hereinafter set forth. It is the obligation of the State Election Board and those acting under its authority and direction, to conduct elections as herein provided, out of any available funds appropriated to it. And, it is the obligation of the members of the Emergency Fund Board to make any necessary funds available to the Governor and to the State Election Board, for the purpose of conducting the special elections herein ordered."
>
> . . .

The Election Board of the State of Oklahoma, and all those acting by and under its authority, are hereby ordered and directed to accept filings and conduct elections, only in accordance with the provisions of the revised order of reapportionment, and in conformity with the special election statutes of the State of Oklahoma where not inconsistent herewith. The said Board and those acting by and under its authority are enjoined from accepting filings otherwise than in conformity therewith, from conducting special primaries or special or general elections otherwise than in conformity therewith, from issuing certificates of nomination or election otherwise than in conformity therewith, from declaring the results of any such election held otherwise than in conformity therewith, and from certifying to the Secretaries of the County Election Boards a list of nominees otherwise than in conformity therewith.

The election boards of the various counties are likewise directed and ordered to conform to the provisions of said order in their conduct of any special primary and general elections, as well as in obtaining ballots and certifying results therefor.

[11] All persons and parties are enjoined and restrained from interfering with the conduct of the electoral process in any manner, from interfering with the terms of said order in any manner, and from taking any actions designed to or which will have the effect of interfering with the carrying out of said order, except as may be provided by law for the appeal of this order to the Supreme Court of the United States. And

this Court retains jurisdiction for the purpose of making any further orders deemed necessary to insure the special elections provided herein, to the end that nominees for the legislative offices provided herein, in accordance with 26 O.S. §§ 541-545, inclusive, shall be duly certified for the general election in November, 1964.

REVISED ORDER OF RE-APPORTIONMENT

The Legislature of the State of Oklahoma is hereby apportioned as hereinafter provided from the date of this order until the fifteenth day after the general election in November, 1972, unless and until a Legislature, elected and constituted by virtue of this apportionment or the duly constituted Apportionment Commission shall reapportion the Legislature in accordance with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The offices of all senators and representatives are hereby declared to be vacant as of the fifteenth day after the general election in November, 1964. The primary and run-off elections conducted in May, 1964, for nominations for the offices of senators and representatives from districts which do not strictly conform to the districts provided herein are hereby declared to be null and void. Those persons nominated in the 1964 primary elections from districts which strictly conform to the districts herein provided shall be the nominees of the appropriate districts and as to such districts only, the 1964 primary elections are not voided.

THE SENATE

The Oklahoma State Senate shall consist of 48 members who shall be apportioned during the period set forth above among the 48 senatorial districts of the State as provided herein.

The term of office of senators elected in the November, 1960, general election, as well as those nominated and elected at the November, 1962, elections, will end with the fifteenth day after the general election in November, 1964, all as provided in Moss v. Burkhart, supra, and affirmed by the Supreme Court of the United States.

Senators elected from even-numbered districts in November, 1964, shall hold office until the fifteenth day succeeding the general election in November, 1966, and senators elected from the odd-numbered districts in 1964 shall hold office until the fifteenth day succeeding the general election in November, 1968. The election of senators in 1966 and 1968 shall be for a term of four years, but the election in 1970 shall be only for a two-year term so that all terms shall expire on the fifteenth day succeeding the general election in 1972.

Each office is designated and distinguished numerically as provided herein and all filings of notification and declaration for nomination and election to any of such offices shall designate the number of the office to which the filings are intended to apply.

The Oklahoma Senate is, therefore, reapportioned as follows:

DISTRICT NO.	AREA WITHIN DISTRICT (Counties)
1.	Ottawa, Nowata, Craig
2.	Rogers, Mayes, Delaware
3.	Cherokee, Wagoner, Adair
4.	Sequoyah, LeFlore

Certificate of Service

I hereby certify that "all parties required to be served have been served" with three (3) copies of Petitioner's Supplementary Brief 1, responding to the Solicitor General's Waiver, and that the "Acknowledgment of Service" by each is filed in the Supreme Court with this Brief. Such service has been made by prepaid U. S. Mail to the Respondent, James E. Carter, to his Post Office address in Plains, Georgia, 31780; and in person to the Office of the Solicitor General, U. S. Department of Justice, Washington, D. C.; and in person to the Attorney General of the United States at his office in the U. S. Department of Justice, Washington, D. C. The U. S. Attorney, Washington, D. C., has also received service in person.

Dated _____ by _____

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